

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

IN THE MATTER OF THE PETITION OF
THE CITY OF STERLING HEIGHTS TO
TAKE CERTAIN LANDS AND PREMISES
UNDER THE POWER OF EMINENT DOMAIN
FOR ROAD, UTILITY, AND ALL ATTENDANT
PEDESTRIAN SAFETY (INCLUDING SIDEWALK)
IMPROVEMENTS TO AND ALONG UTICA
ROAD BETWEEN THE ITC CORRIDOR
AND VALIANT DRIVE.

CITY OF STERLING HEIGHTS,
a Michigan municipal corporation,

Plaintiff,

vs.

Case No. 2005-2713-CC

MARSHALL A. GALPERN;
AIMEE L. GALPERN;
ABN AMRO MORTGAGE GROUP, INC.,
a Delaware corporation; and
THE MACOMB COUNTY PUBLIC
WORKS COMMISSIONER;

Defendants.

OPINION AND ORDER

Plaintiff City of Sterling Heights moves in limine to strike evidence regarding compensation for any portion of the 66-foot road right-of-way.

I. BACKGROUND

Plaintiff filed this action on July 7, 2005 to acquire property rights necessary to improve Utica Road between the ITC corridor and Valiant Drive. Defendants Marshall A. Galpern and



Aimee L. Galpern own the improved real property located at 39420 Utica Road (within the project area), which is subject to a mortgage held by defendant ABN AMRO Mortgage Group, Inc.

An Order for Payment of Estimated Just Compensation and Surrender of Possession was entered August 22, 2005. The amount of estimated just compensation was \$48,100.

A Stipulated Order of Voluntary Dismissal of ABN AMRO Mortgage Group, Inc. was entered March 22, 2006. The *Stipulated Order* provided defendant ABN AMRO would have no interest in the estimated just compensation and plaintiff would have title to the property free and clear of any interest of defendant ABN AMRO.

Plaintiff now moves in limine to strike evidence regarding compensation for any portion of the 66-foot road right-of-way.

II. ANALYSIS

Plaintiff asserts Utica Road is a paved road with a 66-foot right-of-way that has been in public use since 1927. Given the uninterrupted use of Utica Road, Utica Road has been dedicated to the public under MCL 221.20. Given the public dedication, plaintiff contends defendants Marshall and Aimee Galpern have no claim or interest in the existing 33-foot portion of Utica Road running across their land. Hence, plaintiff argues defendants Marshall and Aimee Galpern should be precluded from introducing evidence as to the value of this 33-foot strip of land.

In response, defendants Marshall and Aimee Galpern assert they retain certain property rights in the 33-foot easement for highway purposes. Defendants Marshall and Aimee Galpern note plaintiff sought to condemn 60 feet of their property (the disputed 33-foot portion and an additional 27-foot strip), recognizing their property interest. As plaintiff is now seeking to change the 33-foot easement into fee ownership, defendants Marshall and Aimee Galpern argue

they are entitled to compensation for the 33-foot easement and should not be precluded from presenting evidence as to its value.

Plaintiff's reply has been considered.

In *City of Kentwood v Sommerdyke Estate*, 458 Mich 642, 664; 581 NW2d 670 (1998), our Supreme Court stated:

[O]nce a dedication has occurred and there is no evidence that the presumption has been rebutted, the original property owners no longer own the land dedicated to the public. Therefore, it is incorrect to claim that they retain a fee simple interest in the land. Where the property owner retains no interest in the land, it would be impossible for there to be a "taking." See, e.g., *Cincinnati v White*, 31 US (6 Pet) 431, 440; 8 L Ed 452 (1832) (the original and subsequent property owners, after dedication, have no interest in the dedicated land but the "mere naked fee").

Significantly, defendants Marshall and Aimee Galpern do not dispute the subject 33-foot portion of their land has been used as part of Utica Road since 1927. Hence, this 33-foot portion of land is clearly a public highway that has become dedicated to the public use. MCL 221.20.

Consequently, defendants Marshall and Aimee Galpern have no compensable interest in the existing 33-foot portion of Utica Road running across their land. Therefore, as no purpose would be served by allowing evidence of the value of this property into evidence at trial, such evidence is precluded. MRE 402 and 403. Defendants Marshall and Aimee Galpern shall be limited to presenting evidence of the value of the remaining 27 feet of the condemned property at trial.

III. CONCLUSION

For the reasons set forth above, plaintiff City of Sterling Heights' motion in limine to strike evidence regarding compensation for any portion of the 66-foot road right-of-way is GRANTED.

This *Opinion and Order* neither resolves the last pending claim in this matter nor closes

the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

Diane M. Druzinski, Circuit Court Judge

Date: **AUG 25 2006**

DMD/aac

cc: Robert Davis, Attorney at Law
Lawrence Dloski, Attorney at Law

DIANE M. DRUZINSKI
CIRCUIT JUDGE

AUG 25 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: *[Signature]* Court Clerk